

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	20-NOI-02
Notice of Inquiry Regarding Electric and Natural Gas)	
Service Safety and Reliability)	

COMMENTS OF THE PEOPLE OF THE STATE OF ILLINOIS

Pursuant to 2 Ill. Adm. Code Part 1700, the People of the State of Illinois (the "People" or the "AG"), through Kwame Raoul, Attorney General of the State of Illinois, submit their Comments in response to the Notice of Inquiry issued August 12, 2020, by the Illinois Commerce Commission (the "Commission" or the "ICC"), in the above-styled docket.

I. Introduction

The Illinois Public Utilities Act (the "Act" or the "PUA") mandates that electric utilities submit an annual reliability report to the ICC that describes outages, the condition of current transmission and distribution facilities, plans for improving reliability over time, and more. 220 ILCS 5/16-125(a)–(c). Once every three years, the ICC must assess a utility's annual report and evaluate the entity's reliability performance. *Id.* at 16-125(d).

The Act further imposes on electric utilities the responsibility to file with the ICC a report for every accident involving a utility's plant, equipment, or other property that endangers the safety, health, or property of any person. *Id.* at 8-507. The ICC must investigate all accident reports that it determines require investigation and has the power to issue orders or recommendations to address identified issues. *Id.*

The Illinois Gas Pipeline Safety Act (the "Pipeline Safety Act") mandates compliance with State and Federal safety rules pertaining to natural gas transmission and distribution. 220

ILCS 20. Illinois administrative regulations adopt Federal pipeline safety standards, *see* 83 Ill. Adm. Code Part 590, and prescribe the inspection, enforcement, and appeal process. *See* 83 Ill. Adm. Code Part 596 and Part 265. The ICC must place documents generated by field inspections on its website, 83 Ill. Adm. Code Part 596.20, but there is a process for companies to request a protective order for confidential and proprietary information. The Pipeline Safety Act also tasks the ICC's pipeline safety manager with issuing Notices of Probable Violation (NOPV), written notices given to a pipeline official that includes required corrective action, response deadlines, and potential penalties for failure to correct the identified violation. Pipeline Safety Act, 220 ILCS 20/7.5. Upon receipt of an NOPV, the company may pay the penalty or pursue an appeal. 83 Ill. Adm. Code Part 265.230. The first step in an appeal is an appearance before an Advisory Committee, 83 Ill. Adm. Code Part 265.300, and the second step, if necessary, involves an adjudicatory hearing, 83 Ill. Adm. Code Part 264.400.

This Notice of Inquiry (NOI) asks interested persons to suggest changes that the ICC and utilities should adopt to ensure that electric and natural gas utilities provide service in a safe and reliable manner.

II. Recommendations

The ICC's oversight responsibility begins with inspections and the identification of probable violations and continues through the successful implementation of all required corrective actions. Yet, a review of the ICC's website shows that safety and reliability documents are either not present or displayed in a confusing and haphazard fashion. Thus, the public has little way to determine whether a utility is providing safe and reliable service or if the

ICC is remedying identified issues. The ICC's failure to make transparent its safety oversight process weakens trust in the ICC's ability to effectively ensure safe and reliable service.¹

To promote public transparency, the ICC must provide the public with all accident reports, complaints, inspection findings, corrective plans, and compliance efforts in an organized and comprehensible system. The released documents must allow the public to track utilities' progress through the compliance process.

Why Make the Effort to Find a Problem Only to Walk Away from It?

Public transparency is critical because the reports that the ICC does release show that utilities fail to correct safety and reliability issues and suggest that the ICC Staff does not ensure that identified concerns are addressed. For example, the ICC's triannual reliability assessments show that both major electricity utilities respond slowly to recognized issues.

The ICC recommended to Ameren Illinois Company (AIC) in its evaluation of AIC's 2014 reliability report that the entity more quickly resolve circuit issues that may impact safety and reliability. *See* ICC, ASSESSMENT OF AMEREN ILLINOIS COMPANY'S ANNUAL RELIABILITY REPORT AND ELECTRIC RELIABILITY PERFORMANCE FOR CALENDAR YEAR 2014 (2016). ICC Staff wrote:

At locations where AIC plans to perform remedial action or make reliability improvements on a distribution circuit following poor performance of that circuit, it sometimes takes a long time for AIC to execute those plans. Until AIC completes the planned improvements, customers supplied by the circuit continue to be at risk for an elevated level of interruptions. Circuit N70-330 was a worst performing circuit . . . during 2013 largely due to two episodes where broken spacer cable caused an interruption to the entire circuit: on February 21, 2013, and on July 22. AIC completed work to repair pole tops and replace hardware in May of

¹ *See* Steve Daniels, *ComEd's unusual defense in the case of a fiery death*, CRAIN'S CHI. BUS. (July 12, 2019, 3:11 PM), <https://www.chicagobusiness.com/utilities/comeds-unusual-defense-case-fiery-death> (discussing public confusion as to why the ICC did not investigate an accident involving a guy wire that resulted in the death of one man and a double amputation for another).

2014. It was good that AIC performed this work, but AIC completed it more than a year after the initial whole-circuit outage that occurred in 2013. In the meantime, Circuit N70-330 was again a worst performing circuit during 2014 due to problems with spacer cable “and other hardware”. AIC upgraded sections of spacer cable in February of 2015: two years after the initial problem occurred during an ice storm. It seems likely that completion of this work sooner would have improved reliability on Circuit N70[-]330 during 2014, so that Circuit N70-330 may not have been a worst performing circuit . . . for two years in a row.

Id. at 50. Three years later, ICC Staff identified the same issue when evaluating Ameren’s 2017 reliability report. ICC Staff reported that:

AIC did not complete all of its planned reliability projects during the year that AIC planned to complete them. AIC’s Annual Reports indicate that in 2015 AIC completed about 80% of its planned circuit repairs and pole replacements. Then, in 2016 AIC completed 58% of the planned work, and in 2017, less than 44%. In addition to negatively affecting service reliability, *AIC’s growing backlog of reliability projects could provide AIC employees with the impression that reliability is unimportant.*

ICC, ASSESSMENT OF AMEREN ILLINOIS COMPANY’S ANNUAL RELIABILITY REPORT AND ELECTRIC RELIABILITY PERFORMANCE FOR CALENDAR YEAR 2017 at 59 (2018) (emphasis added).

In its Assessment Report of Commonwealth Edison’s (“ComEd”) activities during 2017, ICC Staff expressed considerable frustration with ComEd’s poor maintenance activities. Specifically, ICC Staff noted that ComEd failed to promptly respond to problems identified by its own inspectors.

C. Inspections Should Serve a Purpose

Despite being periodically inspected by ComEd, obvious threats to reliable service existed along many of the circuits that Staff inspected during 2018. . . . [M]aintenance by ComEd following ComEd’s own inspection is extremely inefficient (why pay an inspector to report problems, then not fix the problems?). Whether ComEd’s inspectors are not reporting the problems that exist, or whether ComEd is choosing to place a low priority on remediation

of problems that its inspectors report, the result is the same – customers are more likely to lose power unnecessarily due to the failure of distribution equipment that ComEd did not repair/replace in a timely manner.

ASSESSMENT OF COMMONWEALTH EDISON COMPANY’S ANNUAL RELIABILITY REPORT AND RELIABILITY PERFORMANCE FOR CALENDAR YEAR 2017 at 43 (2019). It is critical that the Commission address and remedy ICC Staff’s frustration with ComEd’s lackadaisical approach to maintenance and repair through stricter enforcement of corrective measures.

The triannual reliability assessments are some of the only documents provided to the public that describe safety and reliability concerns identified by the ICC. In the three-year period between assessments, the ICC does not prepare or post monitoring or follow-up reports and thus it is unknown whether the utilities have adopted and/or implemented the recommendations contained in the three-year reviews or whether the ICC is verifying that utilities are correcting identified issues. The ICC should supply the public with regular updates and identify concrete steps taken by utilities to address safety and reliability issues and problems.

Transparency and follow up issues also exist with natural gas delivery. Most members of the public are aware that one should “Call JULIE Before You Dig.” The Illinois Underground Utility Facilities Damage Prevention Act bars nonemergency excavation without following the requirements of the statute. *See* 220 ILCS 50/1–14. Yet, one wonders whether Nicor is aware of the JULIE One-Call system.

The ICC conducted a field inspection in October 2018 of Nicor facilities.² As a result of the inspection Nicor received an NOPV, dated February 5, 2019, that included several findings of non-compliance involving JULIE markings and a non-compliant farm tap that released gas into the atmosphere. *See* Nicor Inspection # 2018P00326, NOPV dated February 5, 2019. The

² Documents available at ICC website, Nicor Pipeline Inspection Unit Inspection # 2018P00326.

NOPV stated that at least one of the of the JULIE violations had been cited in a previous inspection.

At the time of the previous inspection, Nicor responded that “a tailgate would be held, and information passed along to Nicor employees.” *Id.* at 2. The NOPV also required Nicor to include in its response to the NOPV a plan for how it intended to inspect all markers and ensure compliance by a date certain. *Id.* Nicor had until March 7, 2019 to respond and the NOPV outlined penalties for failure to comply. *Id.* Finally, the company was advised that it may request a protective order for confidential or proprietary information. *Id.* at 3.

The Pipeline Inspection Unit Inspection #2018P00326 website folder does not contain any subsequent information, and thus does not describe whether Nicor filed a timely response or whether corrective action was taken. It remains unknown what, if any, corrective action was taken as a result of the February 2019 NOPV. Both the company and the customers, but especially those who live near mismarked valves or the farm tap releasing gas into the atmosphere, deserve prompt and effective handling of noncompliance findings particularly when they result in a notice of probable violation of safety and reliability regulations.

The reliability and safety inspection process must be transparent. The public must have access to complete and timely information posted in a comprehensible system on the ICC website. The entire transaction, from initial report to final resolution, should be contained in one folder or, at a minimum, in linked folders. ICC website inspection folders must contain the following information:

- inspection reports,
- compliance violations,
- required corrective actions,
- schedule for remediation of the same,
- documents delineating the consequences of the failure to respond or failure to take corrective action,

- NOPVs,
- NOPV responses,
- the appeal status of a given action, and
- the ultimate resolution of the matter.

The appeal process must be expedited. Finally, the ICC must have sufficient staff and resources to perform the necessary initial and follow-up inspections and engage in enforcement activities.

The Illinois public deserve no less.

III. Conclusion

For the foregoing reasons, the People of the State of Illinois request that the Commission accept the above comments.

Respectfully submitted,

By: _____ /s/
Lauren J. Pashayan
Assistant Attorney General
Public Utilities Policy Counsel
Illinois Attorney General's Office
500 S. 2nd Street
Springfield Illinois 62701
(217) 720-2933 (remote)
lpashayan@atg.state.il.us

Grant Snyder
Assistant Attorney General
Illinois Attorney General's Office
100 W. Randolph Street, 11th Floor
Chicago, Illinois 60601
(312) 814-1104
[gsnyder\[atg.state.il.us](mailto:gsnyder[atg.state.il.us)

September 15, 2020